

# Notice of Allowability

Application No.

09/956,924

Examiner

Andrea M. Ragonese

Applicant(s)

YAGI ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment filed on 19 May 2004 and RCE filed on 19 July 2004.
2. ☒ The allowed claim(s) is/are 1 and 3-12.
3. ☒ The drawings filed on 21 September 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### REASONS FOR ALLOWANCE

1. **Claims 1 and 3-12** are allowed.
2. The following is an examiner's statement of reasons for allowance: the apparatuses disclosed in **claims 1, 11 and 12** comprising "means for supplying the oxygen-enriched gas at a first flow rate of up to 4 liters per minute equal to or less than a continuous base flow rate when a breath-synchronized operation is not performed" in combination with "means for supplying the oxygen-enriched gas at a second flow rate of 5 to 7 liters per minute greater than a continuous base flow rate over an inhalation period having a length of 25 to 40% that of a breathing cycle of the user when the breath-synchronized operation is performed" has been considered in light of 35 USC § 112, sixth paragraph, and requires the disclosure to constitute the structural elements specifically as recited therein. Accordingly, the prior art of record has not taught nor suggested the invention as independently claimed, while invoking 35 USC § 112, sixth paragraph.
3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."
4. Regarding the provisional nonstatutory obviousness-type double patenting rejection of **claims 1-12** over claims 1, 4-10, 12, 14-22 and 24-32 of US Application No. 09/956,925, Applicant's remarks, filed May 19, 2004, have been fully considered and are persuasive. Further review of MPEP § 804(I)(B) determined that the "provisional"

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double patenting rejection as set forth in the Office action, mail date February 24, 2004, should be withdrawn since the instant application is in condition for allowance; however, a nonstatutory double patenting rejection of these conflicting claims in the copending US application will be forthcoming as a "provisional" double patenting rejection, which will be converted into a double patenting rejection, when prosecution is reopened on the suspended copending application and when the instant application issues as a patent.

5. Regarding the provisional nonstatutory obviousness-type double patenting rejection of **claims 1-12** over claims 1-17 of US Application No. 09/957,030, Applicant's remarks, filed May 19, 2004, have been fully considered and are persuasive. Further review of MPEP § 804(I)(B) determined that since the "provisional" double patenting rejection in the instant application is the only rejection remaining, the double patenting rejection as set forth in the Office action, mail date February 24, 2004, should be withdrawn since the instant application is in condition for allowance; however, the nonstatutory double patenting rejection of these conflicting claims in the copending US application will be maintained as a "provisional" double patenting rejection, which will be converted into a double patenting rejection when the instant application issues as a patent.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **(703) 306-4055**. The examiner can normally be reached on Monday through Friday from 8 am until 4 pm.

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7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR



Henry A. Bennett  
Supervisory Patent Examiner  
Group 3700